

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

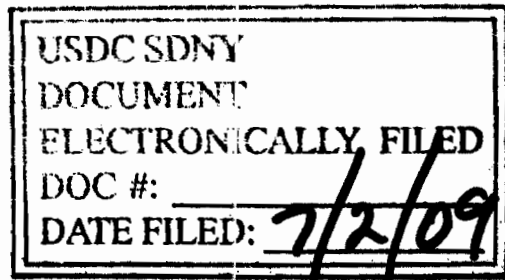
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JO ANNA L. PILLITTERI, on behalf of herself
and all others similarly situated,

Plaintiff,

-v.-

JPMORGAN CHASE & CO., and CHASE
MANHATTAN BANK USA, N.A.,

Defendant.
----- x



05 Civ. 1164 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

Plaintiff filed this action in state court on December 20, 2004, charging that defendants violated state law by charging excessive interest and by wrongfully levying late payment fees. Defendants removed the action to this Court and then promptly moved for a stay of the case pending arbitration of the dispute, which was granted. Arbitration proceedings have been pending for several years, and the case was administratively closed on May 30, 2008.

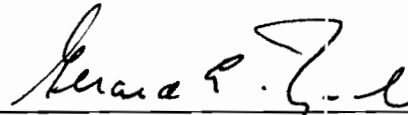
Defendants now seek to reopen the case, lift the stay, and to move to strike the class claims based on an alleged waiver of class claims in the arbitration agreement, relying on the holding of In re American Express Merchants' Litig., 554 F.3d 300 (2d Cir. 2009), that the validity of such a waiver is ordinarily a question for the Court.

Unlike the plaintiffs in American Express, who resisted a motion to compel arbitration, and persistently argued that the class action waiver issue should be decided by the court, defendants here from the outset sought arbitration on all issues, at no point preserved any argument that the class action waiver issue was not arbitrable, and indeed actively litigated the validity and applicability of the class action waiver before the arbitrator. Defendants have thus, by their own actions, failed to preserve any right they may have had to obtain a determination of this issue by the Court.

Accordingly, the application to reopen the case and lift the stay is denied.

SO ORDERED.

Dated: New York, New York
July 1, 2009

A handwritten signature in black ink, appearing to read "Gerard E. Lynch", is written over a horizontal line.

GERARD E. LYNCH
United States District Judge